

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PALINODE, LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 21-1378 (MN) (SRF)
	)	
PLAZA SERVICES, LLC and PROVANA,	)	
LLC,	)	
	)	
Defendants.	)	

**ORDER ADOPTING REPORT AND RECOMMENDATION**

At Wilmington, this 14th day of February 2022:

WHEREAS, on January 18, 2022, Magistrate Judge Fallon issued a Report and Recommendation (“the Report”) (D.I. 150) in this action recommending that the Court deny Plaintiff’s motion for a preliminary injunction (D.I. 108), deny Plaza Services, LLC’s partial motion to dismiss Counts IV and V of the Second Amended Complaint (D.I. 138)<sup>1</sup>, and grant-in-part and deny-in-part Provana, LLC’s motion to dismiss (D.I. 139)<sup>2</sup>; and

WHEREAS, although Provana filed objections to the Report, those objections were limited, and did not object to the recommendations in the Report that the motion for preliminary

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<sup>1</sup> Plaza’s moved pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Counts IV and V of the second amended complaint and, in the interest of judicial economy, incorporated the arguments set forth in Provana’s papers. (D.I. 138).

<sup>2</sup> Provana moved pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the Second Amended Complaint in its entirety (D.I. 139). The Report recommends granting Provana’s motion to dismiss Count II of the Second Amended Complaint and denying the motion in all other aspects. (D.I. 150 at 20).

injunction and partial motion to dismiss Counts IV and V be denied<sup>3</sup> and the Court finds no clear error on the face of the record as to these recommendations;

WHEREAS, the objections relate solely to the Report's recommendation that the Court deny the motion as to Count III – Procurement and/or Inducement of Breach of Contract, Tenn. Code Ann. § 47-50-109, and at Common Law (Against Provana);

WHEREAS, in the Report's analysis section regarding the motions to dismiss, it states:

All parties agree that a choice of law analysis is not necessary for purposes of the pending motions because there are no material differences between the applicable Tennessee and Delaware laws. [D.I. 140 at 3 n.1; D.I. 143 at 7-8]. Consequently, the court does not reach a substantive determination on the choice of law issue at this juncture. *See Pa. Emp. Benefit Tr. Fund v. Zeneca, Inc.*, 710 F. Supp. 2d 458, 466 (D. Del. 2010) (“Delaware’s choice of law rules require that an actual conflict exist prior to engaging in a complete conflict of laws analysis.”).

(D.I. 150 at 12).

WHEREAS, in the objections, Provana agrees with the Report in that the parties did not engage in a choice of law analysis in briefing the motions to dismiss but believed that it was “unnecessary, with respect to Count III, since the [Second Amended Complaint] expressly limits the claim to Tennessee law and the application of Tennessee law to this Count did not appear to be a matter in dispute”;

WHEREAS, in its objections, Provana “respectfully suggests that the Court should have looked solely to Tennessee law when assessing preemption of Count III” thereby raising a choice of law issue;

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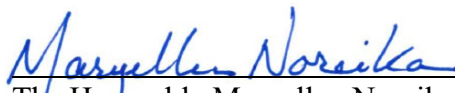
<sup>3</sup> On February 1, 2022, Defendant Provana, LLC filed limited objections pertaining to only the portion of the Report addressing Provana’s motion to dismiss as it relates to Count III of the Second Amended Complaint. (*See, generally*, D.I. 156 & D.I. 156 at 2 n.1). No other objections were filed.

WHEREAS, in the objections, Provana also cites to caselaw not before Judge Fallon and attaches additional information (“Exhibit A”) purporting to support the arguments about the breadth of the preemption doctrine under TUTSA;

WHEREAS, the Court will not hear arguments made for the first time in objections to a Report and Recommendation when those objections could have and should have been made in the motion addressed by the Magistrate Judge. *See* October 8, 2013 Standing Order for Objections Filed Under FED. R. CIV. P. 72;<sup>4</sup> and

WHEREAS, Provana has not established that good cause exists to allow it to raise new factual and legal arguments in its objections.

THEREFORE, IT IS HEREBY ORDERED, that Provana’s objections are OVERRULED and the Report (D.I. 150) is ADOPTED. Plaintiff’s Motion for a Preliminary Injunction (D.I. 108) is DENIED. Defendant Plaza Services, LLC’s Partial Motion to Dismiss Plaintiff Palinode LLC’s Second Amended Complaint (D.I. 138) is DENIED. Defendant Provana, LLC’s motion to dismiss (D.I. 139) is GRANTED as to Count II of the Second Amended Complaint for intentional interference with business relations, and DENIED as to the remaining issues.

  
The Honorable Maryellen Noreika  
United States District Court Judge

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<sup>4</sup> This Court defers to Judge Fallon on whether it is appropriate to address the choice of law issue now or at a later date.